Filed 11/30/12 P. v. Ford CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DEARYL TUCKER FORD, Defendant and Appellant.	H037151 (Santa Clara County Super. Ct. No. C1088686)

Defendant Dearyl Tucker Ford was found guilty by a jury of the theft of a 1967 Corvette that had been stored at a warehouse while the owner was trying to resell the car. (Veh. Code § 10851, subd. (a).) He was also convicted of burglary and vandalism. (Pen. Code §§ 459-460, subd. (b), 594, subds. (a) & (b)(1).)[1]

Before trial, Ford brought a motion under section 1538.5 to suppress evidence that police had obtained from his wallet, which he had left at a business near the warehouse. He also moved to suppress evidence obtained from a friend's storage unit where the stolen Corvette was found. The unit had been secured with a lock to which only Ford knew the combination. He contended this evidence was obtained by police in violation of his Fourth Amendments rights. After hearing, the trial court denied his motion. Ford appeals this ruling, reprising his Fourth Amendment challenges to the gathering and use of the challenged evidence against him, and further contending that the prosecutor

[1] Further unspecified statutory references are to the Penal Code.

committed prejudicial misconduct during his closing argument. We find no merit to his contentions and will affirm the judgment.

STATEMENT OF THE CASE

I. Factual Background

Max Krewson owns Race Street Rally, an auto shop in the City of Santa Clara specializing in the service and repair of Corvettes. In 2010, he employed two people, one of whom was Dat Dang. Dang had previously sold a 1967 Corvette to David Duarte, who later had the car repaired at Race Street Rally.

In July and August 2010, Krewson was storing the repaired Corvette for Duarte in a warehouse Krewson owned. The warehouse was located just next door to Race Street Rally and shared a wall with it. The keys to the Corvette were kept in its ignition or on the car's floorboard. Krewson went into the warehouse only about once a month, and last saw the car there in early September 2010.

Krewson's warehouse next to Race Street Rally where the Corvette was stored had a front door, a roll-up door in the back through which a car could be driven into and from the alley behind, and a "man door" next to the roll-up door for people to walk through. The front door had a lock without a dead bolt. The "man door" at the back also had a lock without a dead bolt. That lock required a key to open it and it had a metal protector plate on the exterior that covered it and extended over the space between the door and the jam, which prevented the lock from being jimmied from the outside. The metal plate was bolted to the door and could only be removed from inside the warehouse by removing the nuts that secured the bolts. Krewson kept the key to the warehouse in one of the drawers of his office desk, which was located in the front of Race Street Rally next door. No one was allowed to go into his desk without his permission.

The alley through which cars could access the rear roll-up door to the warehouse could be blocked off from the nearby street by a gate, which was bound by a chain link

fence and padlock. The tenant at a neighboring auto shop was responsible for opening the alley gate in the morning and then locking it at the end of each business day. But, because the chain was loose, it was possible to lift the gate off its post and swing it open or push it back to permit passage even when the gate was locked.

Krewson had a friend, Israel "Chico" Zuniga, whom he had known for many years. Zuniga would come around and socialize at Race Street Rally and would sometimes do part-time jobs there for Krewson. Around June or July 2010, Zuniga brought Ford around the shop and introduced him to Krewson. After that, Ford began to stop by the shop about once a week, first with Zuniga and then on his own. He did not have business there but he would hang around and talk about cars with Krewson and whoever else was there.

Jerry Jacobson was also one of Krewson's longtime friends and customers. He, too, would sometimes stop by Race Street Rally to socialize and talk about cars. Jacobson came across Ford at the shop a couple of times when they had both stopped by. On one occasion in August or early September 2010, Jacobson was at Race Street Rally and teased Dang about having sold his Corvette so cheaply to Duarte. Zuniga and Ford were there and joined the conversation. Ford asked where the Corvette was kept. Zuniga told him in response that the car was being stored in the warehouse next door. Ford then said a few times that he would like to see the car. About 15 minutes later, Jacobson saw Zuniga go over to Krewson's desk, open one of the drawers, and take something out. Zuniga did not have Krewson's permission to go into the desk. Zuniga and Ford then walked out of the shop, as if headed to the warehouse.

Ford had a friend named Tam Nguyen, whom he had met sometime in 2004. In early September 2010, around the time that Ford had expressed in conversation his desire to see Duarte's Corvette, Nguyen asked Ford if he knew of a storage facility where Nguyen could rent a unit. Nguyen was planning to move and buy furniture, and he

needed a place to store it. In addition, one of his brothers was relocating and he, too, needed to store some things. Ford, who had had contact of some sort with several storage facilities, recommended Extra Space Storage located on De La Cruz Boulevard, about a mile from Race Street Rally.

On September 11, 2010, Nguyen signed a month-to-month lease agreement to rent a large storage unit at Extra Space Storage, and he paid for two months rent. He was the only lessee named in the lease. He was assigned a storage unit and provided with a gate code card to access the entry gate at the facility. But because he did not need to use the unit for a couple of weeks and was going to be out of town, he told Ford, in response to Ford's request, that Ford could use the unit to store some things in that interim. Ford did not pay for the use of the space, but he nonetheless gave Nguyen a combination lock to put on the door. Nguyen did not know or have the combination but he placed the lock on the door of the empty unit when he rented it and locked it, without ever going inside, because Ford would be using the unit first. He gave the gate code card to Ford so Ford could access the unit for the first couple of weeks until Nguyen needed the space for himself. Still, Nguyen considered the unit to be rightfully his and subject to his own access even though he did not have the combination to Ford's lock. He perceived that he was not excluded from the unit by virtue of his having given joint access to Ford and if it happened that he needed to enter the unit without having the combination to the lock, he, as the unit's sole lessee, would simply ask the facility manager to cut the lock.

On September 22, 2010, Krewson discovered that Duarte's Corvette was missing from his warehouse. He contacted Duarte to find out if he had taken the car, which he hadn't, and to inform him that the car was gone. Krewson also called police to report the car stolen.

Sergeant MacFarlane[2] of the Santa Clara Police Department began the investigation. MacFarlane went to Race Street Rally and spoke with Krewson. Krewson told him that Ford had been coming into the shop recently. Krewson also gave MacFarlane Ford's wallet, which Ford had left at the shop two days before when he was last there. Krewson had seen Ford with his wallet out, and he was reorganizing it. MacFarlane considered the wallet lost property, opened it, and looked inside to see if there was any identification to confirm its ownership and any contact information. Among other things, he found Ford's driver's license and passport identification card, both of which showed only a post office box and not a physical address, and the storage unit gate code card that Nguyen had given Ford. The card did not identify the storage facility. MacFarlane asked Krewson to make him copies of these items and returned the wallet to Krewson. As part of his investigation of the theft, he directed Krewson to contact Ford to arrange for Ford to pick up the wallet. MacFarlane intended to arrange surveillance of Ford when he came to Race Street Rally to get his wallet but Ford did so sooner than MacFarlane could set that up.

When MacFarlane initially went to Race Street Rally to speak with Krewson, he examined the warehouse next door and saw that the bolts on the upper hinge of the alley gate outside had fresh scratch marks, as if someone had tried to loosen it. He further observed that the metal protector plate on the "man door" inside was missing and that there were no visible pry marks. From this, he concluded that the plate had been removed from inside the warehouse, which suggested to him that the theft had been an inside job made to look like a burglary.

MacFarlane went to the police station after speaking with Krewson at Race Street Rally. He conducted a background check on Ford and ran his criminal history. He also

[2] The sergeant's name is spelled both "McFarland" and "MacFarlane" in the record. We will use MacFarlane as that is how the sergeant himself spelled his name while testifying.

contacted several storage facilities in the vicinity of Race Street Rally in an effort to identify the location of the unit reflected on the gate code card he had found in Ford's wallet. In the course of doing so, one of the facilities reported to MacFarlane on September 24, 2010, that although the gate code card was for a different facility, Ford had recently rented a unit at that facility and he was then on site. MacFarlane arranged for immediate surveillance of Ford, and an officer observed him leave the storage facility where he was first identified and drive in his white Mercedes, confirmed as his by the license number, to Extra Space Storage where Nguyen had rented the unit. Ford entered the facility and was observed going into unit C045, the unit identified on the gate code card in his wallet. He came out a few moments later carrying two cloth bags. He put the bags in his car and drove away.

MacFarlane learned from management at Extra Space Storage that Nguyen was the sole tenant of unit C045. He also discovered that Nguyen was then on felony probation and accordingly subject to search conditions, and he contacted Nguyen by phone regarding the unit. MacFarlane thought Nguyen might have been a victim of theft at the unit. But Nguyen told MacFarlane that he had not used the storage unit yet and had given Ford access to it. Nguyen then called and texted Ford to ask what was going on with the storage unit and why the police had contacted him, but Ford did not reply. After Nguyen voluntarily answered questions and shared his cell phone data with police, MacFarlane and Nguyen went to the storage unit on September 28, 2010, where Nguyen gave his consent for the unit to be searched and for the lock to be cut off because he did not have the combination.

Inside the storage unit, MacFarlane found the stolen Corvette under a car cover with the key in the ignition. There was extensive damage to the car's exterior paint and several chrome pieces had been removed from the car's exterior. Inside the car was a can of spray paint, a can of starter fluid, a license plate frame, and the metal protector plate

that had been removed from the "man door" inside Krewson's warehouse where the car had been stored. The car was dusted for fingerprints and swabbed for DNA but no usable evidence was found.

Extra Space Storage kept a computerized record of people accessing the facility, broken down by date and time and based on the access codes for each unit entered into the gate key pad. The log showed that someone had entered the facility using the gate code for Nguyen's unit on several occasions between the day he rented it on September 11, 2010, which was the only time he accessed the unit, and MacFarlane's discovery of the stolen Corvette inside the storage unit some two weeks later.

The facility also used surveillance cameras to record activity at the front gate and around the premises. The saved video showed the following activity associated with the access code for Nguyen's unit: a white Mercedes coupe like Ford's entering the facility on September 12, 2010, at 11:44 a.m.; a brown pick-up truck, identified as belonging to Zuniga, entering the facility on September 16, 2010, at 6:29 a.m.; a white Mercedes coupe entering the facility on September 17, 2010, at 7:26 p.m.; a vintage model black Corvette entering the facility on September 19, 2010, at 6:13 a.m.; a white Mercedes coupe entering the facility about 40 minutes later at 6:55 a.m.; and a white Mercedes coupe leaving the facility with a passenger about 11 minutes after that, at 7:06 a.m.

Ford was later arrested for the theft of the Corvette.

II. Procedural Background

After being bound over for trial, Ford was charged by second amended information with second degree burglary in violation of sections 459-460, subdivision (b) (count one); theft of a vehicle in violation of Vehicle Code section 10851, subdivision (a) (count two); vandalism in violation of section 594, subdivision (b)(2)(A), a misdemeanor

(count three); and buying or receiving a stolen motor vehicle in violation of section 496d (count four).[3]

Before trial, Ford filed a motion to suppress evidence under section 1538.5, contending that his Fourth Amendment rights were violated by the warrantless searches of his wallet, in which police found the Extra Space Storage gate code card that led to the storage unit, and the storage unit, in which police found the stolen Corvette. The People opposed the motion and the court conducted an evidentiary hearing at which Sergeant MacFarlane and Tam Nguyen testified.[4] The court denied the motion.

With respect to the wallet, the court relied on *People v. Juan* (1985) 175 Cal.App.3d 1064 (*Juan*), and reasoned that there was no expectation of privacy in the wallet left in the open at a business, as a reasonable person would expect a search of such an item, even if only for the finder to identify and locate the owner. With respect to the storage unit, the court concluded that the search was permissible on the basis that Nguyen was subject to search conditions as part of his probation. The court reached the same conclusion on the additional basis that Nguyen, as the paying lessee of the unit, was a party in legal and actual possession of it and gave his consent for the search, notwithstanding that he did not know or have the combination to Ford's lock placed, by Nguyen, on the door. The court rejected the idea that Ford's lock to which Nguyen did not have the combination converted the space to Ford's exclusive own, negating

---

[3] The information was amended several times, including to reflect the court's pre-trial reduction of the felony vandalism charge in count three to a misdemeanor.

[4] The court admitted into evidence the rental agreement between Nguyen and Extra Space Storage and a certified copy of a document reflecting Nguyen's probation conditions, which included a search condition. These documents are not part of the record on appeal. In addition, when considering the motion to suppress, it appears the court had access to the reporter's transcript from the preliminary hearing at which Sergeant MacFarlane had testified. The parties used this transcript to establish the operative facts in the written arguments on the motion.

Nguyen's right of access, and cited Nguyen's own testimony to the effect that he maintained the right to access the space notwithstanding Ford's temporary use of it.

After a 10-day trial, the jury found Ford guilty of burglary, vehicle theft, and vandalism (counts one through three), and not guilty of buying or receiving a stolen vehicle (count four), which was alternative to count two. The court suspended sentence and imposed three years of formal probation, along with one year in the county jail.

Ford timely appealed.

DISCUSSION

I. *There Was No Fourth Amendment Violation*

Ford contends the trial court erred by denying his pre-trial motion to suppress evidence he contended was obtained in violation of the Fourth Amendment. The targeted evidence included the contents of his wallet, which he had left unclaimed for two days at Race Street Rally and which was searched by Sergeant MacFarlane as part of the police investigation of the stolen Corvette. As noted, this search led to MacFarlane's discovery of the gate code card from Extra Space Storage that, in turn, led to the discovery of the stolen Corvette in the storage unit, also targeted by Ford's section 1538.5 motion.

In ruling on a motion to suppress, the trial court finds the historical facts, selects the applicable rule of law, and applies that law to its findings of fact to determine whether the rule of law as applied to those facts was violated. (*People v. Ayala* (2000) 23 Cal.4th 225, 255 (*Ayala*); *People v. Parson* (2008) 44 Cal.4th 332, 345 (*Parson*); *People v. Woods* (1999) 21 Cal.4th 668, 673-674 (*Woods*).) On appeal, we apply the substantial evidence standard in reviewing the trial court's findings of the historical facts, deferring to the superior court's express and implied findings. (*Ayala*, at p. 255; *Woods*, at p. 674.) We conduct independent or de novo review of the trial court's selection of the applicable rule of law. (*Ayala*, at p. 255.) And because the trial court's determination whether the

rule of law as applied to the facts was violated is predominantly a question of law, we likewise review that determination independently. (*Ibid*.)

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[5] "[T]he protection of the Fourth Amendment depends … upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place" or thing. (*Rakas v. Illinois* (1978) 439 U.S. 128, 143.) One who objects to a warrantless search must demonstrate that he or she had a subjective expectation of privacy in the object of the search, and that society recognizes the expectation as reasonable. Accordingly, "[a] defendant has the burden . . . of establishing a legitimate expectation of privacy in the place searched or the thing seized. [Citations.] The prosecution has the burden of establishing the reasonableness of a warrantless search." (*People v. Jenkins* (2000) 22 Cal.4th 900, 972.) "[T]o claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable." (*Minnesota v. Carter* (1998) 525 U.S. 83, 88.)

A motion to suppress evidence obtained in violation of the Fourth Amendment is a mechanism to enforce the exclusionary rule, which requires that evidence so obtained be generally excluded in subsequent criminal prosecution. (*Mapp v. Ohio, supra*, 367 U.S. at p. 655.) The exclusionary rule is a judicially-created remedy designed to protect Fourth Amendment rights by deterring law enforcement from conducting unlawful searches and seizures. (*United States v. Calandra* (1974) 414 U.S. 338, 347-348.) The

---

[5] The Fourth Amendment is enforceable against the states through the Due Process Clause of the Fourteenth Amendment. (*Mapp v. Ohio* (1961) 367 U.S.643, 655; *Stanford v. Texas* (1965) 379 U.S. 476, 481.) Issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed in California under federal constitutional standards. (*Parson, supra*, 44 Cal.4th at p. 345, fn. 4.)

rule generally operates to prevent the prosecution from using evidence obtained as the indirect product of unlawful conduct in the same way that it prevents the use of evidence directly obtained by the improper conduct—a principle known as the "fruit of the poisonous tree." (*Segura v. United States* (1984) 468 U.S. 796, 804; *United States v. Calandra, supra*, 414 U.S. at p. 347.)

A. *Ford's Wallet*

As noted, Ford left his wallet at Race Street Rally two days before Krewson contacted police to report the Corvette missing from his warehouse next door. Krewson told Sergeant MacFarlane about Ford visiting his shop in the few months before and gave MacFarlane the wallet, which a customer had turned in, to inspect. MacFarlane considered the wallet lost property and found Ford's driver's license and passport identification cards in the wallet, both of which contained a post office box but not a physical address, and the gate code card to Extra Space Storage that Nguyen had given to Ford. MacFarlane had Krewson make copies of these items, and directed him to contact Ford to retrieve the wallet. MacFarlane intended to initiate surveillance on Ford when he came to Race Street Rally to get the wallet, but Ford came sooner than MacFarlane was able to arrange the tail. MacFarlane meanwhile conducted a background search on Ford and ran his criminal history. But it was through investigation of storage facilities in the area in an effort to connect the gate code card to a particular site that MacFarlane successfully located Ford, who, while under surveillance, led police to Nguyen's unit at Extra Space Storage.

Ford contends that he had not abandoned his wallet but instead only inadvertently misplaced it, and that MacFarlane had no right to search the contents of the wallet without a warrant. He further contends that because Krewson conveyed that it was Ford's wallet when he gave it to MacFarlane, it was not even permissible for MacFarlane

to search the wallet to identify its owner. Thus, he contends, all evidence that flowed from the unconstitutional search of his wallet should have been suppressed.

"Property that is abandoned is no longer subject to Fourth Amendment protection because one does not have a reasonable expectation of privacy in" abandoned property. (*People v. Pereira* (2007) 150 Cal.App.4th 1106, 1112; *Parson, supra,* 44 Cal.4th at p. 345.) Therefore, "a warrantless search and seizure involving abandoned property is not unlawful, because a person has no reasonable expectation of privacy in such property." (*Parson, supra,* 44 Cal.4th at p. 345.) "[T]he intent to abandon [property] is determined by objective factors, not the defendant's subjective intent. ' "Abandonment is primarily a question of intent, and the intent may be inferred from words, acts, and other *objective* facts. [Citation.] Abandonment here is not meant in the strict property-right sense, but rests instead on whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search." ' " (*People v. Daggs* (2005) 133 Cal.App.4th 361, 365-366 (*Daggs*), cited with approval in *Parson, supra*, 44 Cal.4th at p. 345.)

The test for abandonment is whether "defendant's words or actions would cause a reasonable person in the searching officer's position to believe that the property was abandoned." (*Daggs, supra,* 133 Cal.App.4th at p. 365-366.) " ' "In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein." ' [Citations.] If the defendant has so treated the object as to relinquish a reasonable expectation of privacy, it does not matter whether formal property rights have also been relinquished. [Citations.]" (*In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1048 (*Baraka H.*).) Thus, abandonment for Fourth Amendment purposes may occur without the actor intending to permanently relinquish control over the object. The question is whether, at the time of the search and seizure, the defendant had an objectively reasonable expectation of privacy with respect to the object. (*Id.* at p. 1049;

Daggs, supra, 133 Cal.App.4th at p. 367.) This issue is one of fact, and the trial court's finding must be upheld if supported by substantial evidence. (*Parson, supra*, 44 Cal.4th at p. 346; *Daggs, supra*, 133 Cal.App.4th at p. 365.)

In *Daggs*, police found a cell phone, which the defendant had inadvertently left at the scene of a robbery at Walgreen's. Police immediately booked the cell phone into evidence and one week after the robbery, no one had come into Walgreen's to retrieve it, suggesting a connection to the robber. In an effort to determine ownership of the phone, police removed the battery and obtained identifying numbers from it. From these numbers, police obtained a search warrant to compel the telephone company to release the subscriber's name, telephone number, and telephone records. The subscriber was defendant's brother, who informed police that he had given the phone to defendant. Defendant testified at the hearing on his motion to suppress evidence obtained from the warrantless search of the phone's battery that he realized he had lost his locked cell phone a few hours after being at Walgreen's, and he assumed he had dropped it there. He wanted the phone back but decided not to attempt to retrieve it for fear of being arrested for the robbery, thereby abandoning it. (*Daggs, supra*, 133 Cal.App.4th at p. 364.)

In affirming the trial court's denial of the defendant's motion to suppress, the court of appeal rejected his contention that because he had accidentally left his phone at Walgreen's and would have reclaimed it had he not feared arrest, he had not intentionally or voluntarily discarded or abandoned the phone for Fourth Amendment purposes. (*Daggs, supra*, 133 Cal.App.4th at pp. 365-366.) Although defendant's subjective intent may not have initially been to abandon the phone, he still left it unattended at a public place of business, fled, and had made no attempt to reclaim it a week later when police conducted the challenged search. (*Id.* at p. 365.) At that point, it was objectively inferable that the phone belonged to or had been in possession of the robber, who had fled the scene and discarded the phone, evincing his intent not to reclaim it and

establishing the phone as abandoned for Fourth Amendment purposes. (*Id.* at pp. 366-367.)

Similarly, in *People v. Shepherd* (1994) 23 Cal.App.4th 825 (*Shepherd*), the court of appeal affirmed the trial court's denial of the defendant's motion to suppress. Defendant had left her purse in a stolen truck. Police searched the truck and the purse, which contained information that identified defendant. (*Id*. at p. 827.) The court concluded that defendant had no legitimate expectation of privacy in the purse. (*Id.* at p. 829.) "Whether a woman has a legitimate privacy interest in the contents of her purse depends in part on where the purse is located. Thus, a woman who forgetfully leaves her purse on a chair at the dress shop may reasonably expect someone to look inside it to ascertain the rightful owner. (See [*Juan, supra*, 175 Cal.App.3d 1064].) Similarly, one who leaves her purse in a stolen vehicle may reasonably expect someone to look in the purse to ascertain the identity of the victim or thief. In short, by leaving her purse in a stolen vehicle, defendant failed to take normal precautions to maintain her privacy in the purse." (*Shepherd, supra*, 23 Cal.App.4th at p. 829.)

In *Baraka H.*, the minor was observed by undercover police on a street corner flagging down cars. He would approach drivers, walk over to a crumpled paper bag sitting on the ground among some leaves, reach into the bag, and then put it back on the ground. Returning to the driver's window, he would receive money in an apparent exchange for something the officer suspected was narcotics, hand off the money to another male, and wait for the next car. (*Baraka H., supra*, 6 Cal.App.4th at p. 1042.) Police arrested Baraka H., and retrieved the brown paper bag, which contained packages of marijuana. The court of appeal affirmed the trial court's denial of the minor's motion to suppress, concluding that when he "placed a crumpled paper sack on the ground near a public sidewalk, well out of his reach, he gave up any reasonable expectation that it should be recognized as 'his' or that he should be recognized as entitled to have it or its

contents left alone. If he in fact entertained such an expectation, it was not an objectively reasonable one, and would not become such merely because of a posited secret intention to assert an interest if and when the sack was approached." (*Baraka H., supra,* 6 Cal.App.4th at p. 1046.)

In *Juan*, the case on which the trial court relied in denying the motion to suppress, police received an anonymous tip that two men in a restaurant had been discussing a robbery they had committed against a woman on the street, and that they had left behind a jacket draped over a chair when they left their table. Police found the victim's stolen passport on the floor directly beneath the chair. They then searched the jacket and found her credit cards. The officers took possession of the passport and credit cards, placed the jacket back on the chair, and waited. Sometime later, the defendant and another man came into the restaurant, went right to the table and chair where the jacket was situated, began to search through its pockets, and were promptly arrested for the robbery. Upon a search of the defendant's person, other property belonging to the victim was also found. (*Juan, supra,* 175 Cal.App.3d at pp. 1066-1067.)

The defendant in *Juan* brought a motion " 'to suppress all evidence resulting from the unlawful search of the jacket.' " (*Juan, supra,* 175 Cal.App.4th at p. 1067.) Affirming the trial court's denial of the motion, the court of appeal concluded that the defendant had "no reasonable expectation of privacy with regard to his jacket left draped over a chair at an empty table in a restaurant open to the public. . . . Indeed, an individual who leaves behind an article of clothing at a public place most likely *hopes* that some Good Samaritan will pick up the garment and search for identification in order to return it to the rightful owner. By leaving his jacket unattended in the restaurant, Juan exposed it to the public and he cannot assert that he possessed a reasonable expectation of privacy in the pockets of the jacket." (*Id.* at p. 1069.) The court relied on *United States v. Alewelt* (7th Cir. 1976) 532 F.2d 1165, 1167, which had held that leaving an item unattended in a

public place evidences a "relinquishment of any reasonable expectation of privacy and security in regard to it." (*Juan, supra*, at pp. 1068-1069.)

The thrust of Ford's argument here is that he did not intend to abandon his wallet but instead only inadvertently left it at Race Street Rally, and, therefore, he maintained an expectation of privacy in it. He cites *Parson, supra*, 44 Cal.4th at 347-348, for the proposition that an expectation of privacy may not be forfeited by inadvertence and that in order for property to be considered abandoned for Fourth Amendment purposes, its owner must subjectively intend to abandon it. While *Parson* held that the question of abandonment is primarily one of the defendant's intent, that intent is determined not by subjective factors but by *objective* ones, like a defendant's words and actions. (*Parson*, 44 Cal.4th at pp. 347-348; see also *United States v. Kendall* (9th Cir. 1981) 655 F.2d 199, 200-201 [defendant's hope of recapturing property in future is not factor].)

Here, the only objective factors present at the time of the search are that Ford had left the wallet behind in the lobby at Race Street Rally two days before Krewson's discovery of the stolen Corvette and had made no inquiry about it in that interim. These facts, objectively measured, do not give rise to a reasonable expectation of privacy. Like in *Juan* and *Shepherd*, they give rise to just the opposite—an expectation that such property left unattended in the open will be searched by someone, even if only to determine and find the rightful owner. It makes no difference whether Ford subjectively intended to permanently discard or abandon the wallet when he left it, albeit inadvertently, in the open at a business near the scene of the crime.

Ford contends that *Juan* is wrongly decided in that an expectation of privacy is not forfeited by inadvertence; rather, he argues, one must subjectively intend to abandon the property to lose an expectation of privacy in it. But as we have explained, this is not the law, at least as applied in California, which is coextensive with and no more protective

than federal law concerning the Fourth Amendment.[6] Abandonment of property for Fourth Amendment purposes is instead determined by intent as *objectively* manifested. The defendant's mere subjective intent to reclaim property inadvertently lost is not determinative. (*Parson, supra*, 44 Cal.4th at pp. 347-348; *Daggs, supra,* 133 Cal.App.4th at p. 365-367; *Baraka H., supra*, 6 Cal.App.4th at pp. 1046, 1049.) We decline Ford's invitation to follow the contrary holding in *Wolf v. State* (2008) 663 S.E.2d 292 (*Wolf*), a case from Georgia citing largely state law.

Ford also cites *Wolf* for the related proposition that an owner's expectation of privacy in lost personal effects is only diminished to the limited extent that police may examine the item as necessary to determine its rightful owner, a determination that was not necessary here because MacFarlane knew the wallet was Ford's when he examined its contents. (*Wolf, supra*, 663 S.E.2d at p. 879.) Not only is this limitation on police conduct in conducting a search of lost property not the law in California, but we find this proposition inconsistent with an objectively reasonable expectation of privacy. It is objectively *unreasonable* to maintain *any* expectation of privacy in personal property such as a wallet that is openly left in a public place or business. MacFarlane's search of Ford's wallet was therefore not limited to identifying the wallet's owner or made improper by the fact that MacFarlane already knew the wallet was Ford's when he searched it. Moreover, to the extent Krewson, a private party, had already searched the wallet to identify its owner, this did not taint or limit the later search by MacFarlane.

---

[6] "The enactment of California Constitution, article I, section 28, subdivision (d) (Proposition 8) on June 8, 1982, permits us to suppress evidence only if that result is compelled by the United States Constitution; a violation of the California Constitution is no longer a basis for exclusion. [Citation.] In interpreting the United States Constitution, as in the case of all federal law, we are bound by the decisions of the United States Supreme Court and find persuasive authority in the decisions of other federal courts. [Citation.] We are also bound by the decisions of the California Supreme Court." (*People v. Brouillette* (1989) 210 Cal.App.3d 842, 846 (*Brouillette*).)

Krewson was not an agent of the state; thus, MacFarlane's repeat "inspection of the contents of the wallet 'did not infringe any constitutionally protected private interest that had not already been frustrated as a result of private conduct.' (*United States v. Jacobson* [(1984) 466 U.S. 109, 126].)" (*Brouillette*, *supra*, 210 Cal.App.3d at p. 848.) Ford argues that even if this is so, police may not engage in a search that exceeds the scope of a search previously performed by a private actor, like Krewson. But here, there is nothing in the record to suggest that Krewson's prior search of Ford's wallet was lesser in scope than MacFarlane's second search.

We further reject Ford's attempt to distinguish *Juan* on the basis that the property at issue here is a wallet, not a jacket, suggesting that the expectation of privacy derives intrinsically from the nature of the article. No matter its nature, the expectation of privacy in the article is lost when it is left unattended out in the open, the owner having failed, even inadvertently, to take normal precautions to maintain an expectation of privacy. (*Shepherd*, *supra*, 23 Cal.App.4th at pp. 828-829 [no expectation of privacy in purse left in stolen vehicle].)

The trial court concluded that under the circumstances presented here, there was no reasonable expectation of privacy in the wallet when MacFarlane searched it, a conclusion that is supported by substantial evidence. Without a reasonable expectation of privacy in the thing searched, there can be no Fourth Amendment violation. We accordingly conclude that MacFarlane's search of Ford's wallet did not violate his Fourth Amendment rights.

B. *The Storage Unit*

Ford further contends that even if MacFarlane's search of his wallet was valid, the later search of the storage unit, which was preceded by police breaking the combination lock that secured it, was not. The basis of this contention is that Nguyen had no actual or

apparent authority to consent to the search or to the breaking of the lock because at the time, Ford had exclusive control over the storage unit.

As noted, Nguyen rented the unit at Extra Space Storage on September 11, 2010. He didn't actually need it for a couple of weeks and would be out of town, and told Ford he could use it in the interim. Nguyen alone signed a rental agreement and paid two months rent. Nguyen gave the gate code card to Ford because he would be using the unit first, and MacFarlane later found that card in Ford's wallet. Ford gave Nguyen a combination lock to place on the door, and Nguyen did so without obtaining the combination to open the lock. He figured that as the lessee, he could always get into the unit if he needed to by cutting off the lock with help from the facility's management, and he didn't anticipate needing to use the unit in the short term anyway. As Nguyen testified at the hearing on the motion to suppress, he nevertheless still considered the unit to be within his control and subject to his own access notwithstanding Ford's use of it, and the trial court so found.

Police followed Ford to Extra Space Storage and observed him enter and exit the particular unit. MacFarlane discovered that Nguyen was the unit's lessee and that Nguyen was then on probation with search conditions. MacFarlane contacted Nguyen, thinking that Nguyen may have been victimized by a theft at his unit, but Nguyen told MacFarlane that none of his property was then in the unit and that he had let Ford temporarily use it. Nguyen was cooperative, allowing police to access the data on his cell phone that showed text messages and calls to Ford and consenting to a search of the storage unit. He met MacFarlane at the unit and authorized police to break the lock to which he lacked the combination. There, police found the stolen Corvette, its exterior having been damaged in an effort to disguise its look. MacFarlane then viewed access records and video maintained by Extra Space Storage that showed, among other things, Ford entering and exiting the facility multiple times in the relevant time period in

September 2010, and the Corvette being driven in early one morning, followed by Ford some 40 minutes later in his own car, which then left with a driver and passenger.

A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the specifically recognized exceptions. (*Katz v. United States* (1967) 389 U.S. 347, 357.) One of those exceptions is the doctrine of consent by which a warrantless search of a premises is valid when an occupant with authority has given voluntary consent to police to search any area held in common with a co-occupant. (*Georgia v. Randolph* (2006) 547 U.S. 103, 109; *Illinois v. Rodriguez* (1990) 497 U.S. 177, 181.) The burden of establishing common authority rests with the state. (*United States v. Matlock* (1974) 415 U.S. 164, 171 (*Matlock*); *Illinois v. Rodriguez*, *supra*, 497 U.S. at p. 181.)

As the California Supreme Court has observed, "It has long been settled that a consent-based search is valid when consent is given by one person with common or superior authority over the area to be searched; the consent of other interested parties is unnecessary. [Citations.]" (*Woods*, *supra*, 21 Cal.4th at pp. 675-676.) " '[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.' [Citations.] The 'common authority' theory of consent rests 'on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.' [Citations.]" (*Id.* at p. 676.)

Consent to search by a third party is not valid unless the third party has or reasonably appears to have authority to give consent and the searching officers have a

good faith belief in the validity of the consent. (*Illinois v. Rodriguez*, *supra*, 497 U.S. at pp. 186-189; *People v. Escudero* (1979) 23 Cal.3d 800, 806.) Part of the evaluation of the reasonableness of the consent is "the great significance given to widely shared expectations, which are naturally enough influenced by the law of property, but not controlled by its rules. [Citation.] *Matlock* accordingly not only holds that a solitary co-inhabitant may sometimes consent to a search of shared premises, but stands for the proposition that the reasonableness of such a search is in significant part a function of commonly held understanding about the authority that co-inhabitants may exercise in ways that affect each other's interests." (*Georgia v. Randolph, supra*, 547 U.S. at p. 111.) Such an understanding includes an assumption tenants "usually make about their common authority when they share quarters. . . . As *Matlock* put it, shared tenancy is understood to include an 'assumption of risk' on which police officers are entitled to rely[.]" (*Ibid*.) The key factor in gauging the authority of a person other than the defendant to give consent is the degree of access or control that person has over the searched premises or property. (*People v. Escudero, supra*, 23 Cal.3d at pp. 807-808.) Common authority justifying consent need only rest on mutual use of property by persons having joint access or control for most purposes. (*Matlock, supra*, 415 U.S. at p. 171.)

Ford rests his contention that the search of the storage unit was invalid on the factual premise that for "the time period involved, the storage unit was exclusively controlled by [him]. It was his private area, which he did not in fact share with anyone." But on this record, this is a false premise. There is no evidence that even though Nguyen was not yet using the unit, he either expressly or impliedly granted Ford *exclusive* use or control over the storage unit for any period of time or that there existed in fact anything other than their rights to mutual use. Although Ford gave Nguyen the lock to put on the unit without providing him with the combination, this alone, as the trial court found, did not transform the space from one to which there was joint access to one in which the right

to access and control was exclusively enjoyed by Ford. Certainly, Nguyen did not have this understanding, as he so testified, and this testimony was not disputed. Nguyen considered himself to have provided joint access to Ford, but certainly not to the exclusion of his own, and he manifested to police his control over the unit and his right to access it by virtue of his lease, showing him as the only tenant and establishing his legal right of access. On this record, Ford enjoyed the benefit of the use of the space and access to it but assumed the risk that Nguyen might exercise at some point his common authority to access the unit notwithstanding the combination lock on the outside. Ford therefore did not, as a matter of fact, have a reasonable expectation of privacy in the unit, and Nguyen's consent to its search, as a party with joint access and control, rendered the search valid.[7] Ford's Fourth Amendment rights were accordingly not violated by the consensual search of the storage unit.

II. *The Prosecutor Did Not Commit Prejudicial Misconduct*

Ford contends that in closing argument, the prosecutor stated repeatedly, and incorrectly, that any involvement by Ford in the theft of the car, even as a getaway driver, was sufficient to support a conviction on all charges, misstating the law of aiding and abetting. This, he contends, constituted prosecutorial misconduct that was prejudicial in that it effectively reduced the level of proof required for conviction, depriving him of a fair trial.

A. General Principles of Prosecutorial Misconduct

The law concerning review of claims of prosecutorial misconduct is well settled. In *People v. Hill* (1998) 17 Cal.4th 800 (*Hill*), the California Supreme Court reiterated the legal principles applicable to claims of prosecutorial misconduct. " ' "A prosecutor's . . . intemperate behavior violates the federal Constitution when it comprises a pattern of

[7] Having so concluded, we need not reach the alternative question whether the probation search condition to which Nguyen was subject additionally authorized the search of the storage unit.

conduct "so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process." ' " [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves " ' "the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury." ' " [Citations.]' [Citations.]" (*Hill, supra*, 17 Cal.4th at p. 819; see also *People v. Lopez* (2008) 42 Cal.4th 960, 969.)

With regard to closing argument, a prosecutor is given wide latitude to comment on the evidence. (*Hill, supra*, 17 Cal.4th at p. 819.) "Although counsel have 'broad discretion in discussing the legal and factual merits of a case [citation], it is improper to misstate the law. [Citation.]' [Citation.]" (*People v. Mendoza* (2007) 42 Cal.4th 686, 702.) This is particularly so when counsel attempts to "absolve the prosecution from its prima facie obligation to overcome reasonable doubt on all elements." (*People v. Katzenberger* (2009) 178 Cal.App.4th 1260, 1266.)

When the defendant's claim on appeal focuses on comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of those remarks in an objectionable fashion. (*Ayala, supra,* 23 Cal.4th at p. 284.) "In conducting this inquiry, we 'do not lightly infer' that the jury drew the most damaging rather than the least damaging meaning from the prosecutor's statements." (*People v. Frye* (1998) 18 Cal.4th 894, 970, disapproved on a different point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) "[W]e consider how the statement would, or could, have been understood by a reasonable juror in the context of the entire argument. [Citations.] No misconduct exists if a juror would have taken the statement to state or imply nothing harmful." (*People v. Woods* (2006) 146 Cal.App.4th 106, 111.)

" 'To preserve a claim of prosecutorial misconduct for appeal, a criminal defendant must make a timely objection, make known the basis of his objection, and ask

the trial court to admonish the jury.' [Citation.] There are two exceptions to this forfeiture: (1) the objection and/or the request for an admonition would have been futile, or (2) the admonition would have been insufficient to cure the harm occasioned by the misconduct. Forfeiture for failure to request an admonition will also not apply where the trial court immediately overruled the objection to the alleged misconduct, leaving defendant without an opportunity to request an admonition. A defendant claiming that one of these exceptions applies must find support for his or her claim in the record." (*People v. Panah* (2005) 35 Cal.4th 395, 462.)

B. Background From the Record

Before closing arguments by counsel, the judge instructed the jury. Ford raises no claim of error with respect to these instructions.

During his closing argument, the prosecutor made the following statements[8]:

1) In discussing that the Corvette was driven to the storage unit by someone, followed by Ford in his own car 40 minutes later, followed by Ford and a passenger departing the facility a few minutes later: "And regardless of what you think about Ford's level of planning in this crime, even if you were to think that he wasn't the one who was chiefly involved in planning it, although I'd submit to you that . . . he is, at a minimum, . . . a getaway driver. And this is something we talked about in voir dire. We talked about the fact that in . . . crimes . . . sometimes the people who are prosecuted are . . . the bank robbers, and sometimes they're the lookouts for the bank robbers. [¶] But under our system of laws, when you aid and abet someone in committing a crime, you're just as guilty of the crime as the bank robber himself, even if you cast aside all the other evidence in the case and you *look at this surveillance video that*

[8] Italicized portions are the statements that Ford specifically characterizes as prosecutorial misconduct. The entire quotes reflected here provide the full context in which the statements were delivered.

shows Mr. Ford driving the Corvette driver away from the scene, he's the getaway driver. And he's guilty of the crime even if you forget about everything else. But you don't have to forget about everything else."

2) "[I]t's your only question in the case. The only question in this case is was Mr. Ford involved in this crime? Did he commit a burglary? Did he commit [vehicle theft]? The only question is did Mr. Ford participate in this crime?"

3) After discussing the elements of each crime charged as set out in the jury instructions, the prosecutor specifically discussed the instructions concerning aiding and abetting: "CALCRIM instruction 400, Aiding and Abetting. And we talked about this too during voir dire. In our system of laws, it's . . . not only whether or not you did the crime directly. You're also guilty of the crime if you helped another person do the crime, if you aided and abetted that person." The prosecutor then read aloud CALCRIM 400 concerning general principles of aiding and abetting. He continued, "[W]e've said this was a two-man job. We've said this was a crime committed by Israel Zuniga and Mr. Ford. They were working together. Remember—and I can't emphasize this enough—no matter what role you think Mr. Ford played in this, the lookouts in a bank robbery are just as guilty as the robbers, and so are the getaway drivers. Even if you think that Mr. Ford was only a lookout or a getaway driver, he's still guilty of burglary. He's still guilty of vehicle theft. [¶] *The only question before you is was he involved in this crime? You don't have to decide his level of involvement. All you have to decide is that he was involved in some way.*" The prosecutor then read aloud CALCRIM 401, concerning aiding and abetting, intended crimes. He continued, "Even if someone aids someone with his words, that's sufficient for aiding and abetting. . . . [I]f you don't think that the defendant committed the crime himself, that's for you to decide.

Based on the evidence, you should find that he committed the crime himself. But in the worst case scenario, if you find that the defendant wasn't directly involved with the crime, if he helped the person who committed the crime in any way, if he helped that person at all, he's guilty of [the charged crimes]."

4) In discussing CALCRIM 373 concerning other perpetrator, the prosecutor emphasized that the jury should not be concerned with what happened to any other people potentially involved in the crimes. After reading the instruction aloud, he said, "This is saying it's not your job to figure out what, if anything, happened to Mr. Zuniga; what, if anything, happened to Mr. Nguyen. Those are separate proceedings. *Your inquiry is very, very limited* here. . . . 'Your duty is to decide whether the defendant on trial here committed the crimes charged.' [¶] . . . That's your only question here, folks, is whether Mr. Ford committed these crimes, whether he participated in these crimes. *Your only question is did Mr. Ford play a role in these crimes*? That's it. And you're required by law to focus on that singular question."

5) In rebuttal, the prosecutor returned to the topic of aiding and abetting. He said, "A person is guilty of the crime . . . whether he or she committed it personally or aided and abetted the perpetrator who committed it. As we've said throughout this entire case, this was more than a one-man operation. . . . [¶] Here we know that there were two people involved because Mr. Ford followed the driver of that Corvette into the facility and drove him away. By definition, that's a two-person job. It took two people to drive the cars. So regardless of whether or not you think it took two people to close this gate up or it took one person, it doesn't matter. It's a two-person job. And if you find that Mr. Ford was aiding and abetting someone else, he's guilty of the underlying crimes. [¶]

. . . [T]he only question before you is was the defendant involved in these crimes?"

6) Further in rebuttal, the prosecutor made an analogy to a hub and spokes, with Ford being the hub and other potential perpetrators being the spokes. "[W]hen you're doing your deliberations, to the extent that you do consider this argument by the defense that other people were involved, do your own analysis. Can any of these people do the crime without Mr. Ford? Without the hub of that wheel? If you take away the hub of the wheel, Mr. Ford, there's no connection among any of these people. The only connection is Mr. Ford, and that's the only way that the crime is committed—with Mr. Ford's help, ..." The prosecutor then read aloud CALCRIM 373 concerning other perpetrator again, and said, "[T]here's a number of reasons why Mr. Ford is the only one on trial here. . . . [T]hat's not for you to consider or to decide or to factor into your analysis. Your duty is to decide whether the defendant on trial here committed the crimes charged. That's it. *Your singular—your only question is was Mr. Ford involved in these crimes*?"

These statements were made by the prosecutor without objection. Defense counsel did make seven unrelated objections to other matters during the prosecutor's closing argument and rebuttal, one of which was sustained. The second of these was made three sentences into the People's rebuttal. Defense counsel objected and asked to approach the bench. The court said, "Better be good" and heard the objection at sidebar, overruling it. On three of these occasions in which defense counsel made objection, the judge directed defense counsel to be seated after her ruling, and on the fifth occasion said that the objections were "getting a little much."

After closing argument had concluded and outside the presence of the jury, defense counsel said he wished to state some additional objections on the record

regarding various matters that had occurring during the trial. The court pointed out that this was "after the fact" and that the court didn't want counsel "making a record [later] when you didn't make one at the time." The court nevertheless permitted counsel to proceed.

After addressing some other unrelated matters, which prompted the court to accuse defense counsel of making "misstatements," and turning to the prosecutor's closing argument, defense counsel noted that he had objected during the People's rebuttal but that the court had "curtly" overruled his objections. Counsel suggested that the court had in effect told the jury that "there were too many objections being made and that counsel, in so many words, could basically stay in his seat." The court disputed this characterization of what had happened. "No counsel. You kept standing after I overruled you, and I told you to sit down because it's distracting, when somebody else is arguing, for you to be constantly standing up after I've already ruled. [¶] So I never told you to sit down. This is another misstatement." Defense counsel continued, "I think that what [the prosecutor] specifically told the jury was that the only question that was before them was whether the defendant was involved with the crime." The court asked, "Did you make that objection?" Counsel replied, "Your Honor, this . . . was after you had basically told me to stop making objections." The court responded, "I don't think so. I don't think I ever told you that." Then counsel asserted that it had become futile for him to object, such that he had no longer been required to make a timely objection.

In response to the accusation that he had misstated the law, the prosecutor noted that to the extent his description of the law had deviated in any way from that explained in the jury instructions, he had shown to the jury a blow up of every instruction as he had discussed each one.

C. Forfeiture

Ford concedes that his counsel raised no objection below to the prosecutor's statements during closing argument that he now contends constituted prosecutorial misconduct. But he argues that the futility exception to forfeiture applies, contending that the trial court's prior rulings against the defense establish that the court was "especially unreceptive" and further objections would have been futile.

Based on our review of the record, we conclude that Ford forfeited his claim of prosecutorial misconduct. His counsel failed to object to the prosecutor's statements on any ground and the record illustrates not that the court was overly unreceptive to objections or that counsel was told to stop objecting but, instead, that after five unrelated objections during the People's closing and rebuttal, only one of which was sustained, the judge was tiring of unmeritorious objections and irritated that defense counsel was continuing to stand after her rulings. The court still entertained and ruled on two more defense objections, again reminding counsel to be seated. None of this illustrates that further objections, on meritorious grounds, would have been futile, and defendant's claims of prosecutorial misconduct have therefore been forfeited.

But "an appellate court may review a forfeited claim—and '[w]hether or not it should do so is entrusted to its discretion.' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7.) Despite that Ford has forfeited his prosecutorial misconduct claim, we exercise our discretion to review it on the merits. Doing so serves judicial economy insofar as Ford claims that he received ineffective assistance of counsel with respect to the claim. We accordingly proceed to the merits.

D. Ford Has Not Demonstrated Prosecutorial Misconduct

The thrust of Ford's claim is that the prosecutor misstated the law concerning aiding and abetting, which resulted in conveying a lesser standard of proof than was

required for conviction and eased the specific intent requirement for burglary and vehicle theft.

In analyzing the claim, we first observe that the court properly instructed the jury immediately before the prosecutor's closing argument, and that these instructions included CALCRIM 200, which admonished the jury, among other things, that it must follow the law as instructed by the court even if the attorneys' comments on the law were believed to conflict. The court also instructed per CALCRIM 220 concerning reasonable doubt; CALCRIM 252 concerning general and specific intent as well as that three of the four charged crimes required proof of specific intent; CALCRIM 373 concerning other perpetrator and that the jury's duty was to decide whether Ford, not anyone else, committed the charged crimes; CALCRIM 400, 401, and 1702 concerning aiding and abetting, including the requirement of proof that the defendant intended to aid and abet before or during the commission of the crime and of the required intent to be guilty of burglary as an aider and abettor; and, finally, the required elements of each of the charged crimes.

Given these instructions, of which Ford does not complain, we " 'presume that jurors treat[ed] the court's instructions as a statement of law by a judge, and the prosecutor's comments as words spoken by an advocate in an attempt to persuade.' " (*People v. Thornton* (2007) 41 Cal.4th 391, 441.) Absent any contrary indication, we further presume the jury followed these instructions. (*People v. Gray* (2005) 37 Cal.4th 168, 217.) We find no contrary indication here. What's more, these correct instructions tend to negate any possibility that the jury misunderstood the law. (See *People v. Dykes* (2009) 46 Cal.4th 731, 773.)

Turning to the prosecutor's particular statements of which Ford complains, we are not convinced that they reduced the proof required for conviction to anything less than reasonable doubt or reduced what was required to prove Ford's guilt by aiding and

abetting. Taken in context and in light of the whole argument, it was clear that the prosecutor was merely expounding on what had already been properly explained by the jury instructions, which were referenced by the court as controlling and blown up for the jury to see as the prosecutor referenced them. His comments, as a whole, did not expressly or impliedly contradict those instructions, or alter their effect. And when discussing aiding and abetting, the prosecutor even read aloud the specific instructions, reinforcing their predominance and accurately stating the law. Ford specifically claims that by isolating his own involvement in the crimes as the only issue for the jury to decide, the prosecutor was attempting to bypass the specific intent requirements of the crimes or misstate the law of aiding and abetting. But the context of these remarks by the prosecutor was not regarding intent; rather, it was other perpetrators, whom the jury had been properly directed to disregard in its deliberations by focusing only on Ford. The prosecutor's remarks simply emphasized that aspect of the jury's duty.

Finally, even if the prosecutor's comments bordered on misconduct, we conclude on this record that there was no prejudice. Contrary to Ford's contention, this was not a close case as shown by the record. The jury was presented with evidence that before the crime, which was likely an inside job, Ford had been present at Race Street Rally and had voiced interest in the car and its whereabouts. After Zuniga grabbed something from the desk where the key to the warehouse was stored, Ford and Zuniga were seen walking out of Race Street Rally, as if towards the warehouse. Ford had also arranged to use Nguyen's storage unit. Further, Ford was seen in his own car on surveillance video entering the storage facility 40 minutes after the stolen Corvette was driven in, and then leaving the facility with a passenger. Based on this evidence, it is unlikely the jury would have acquitted Ford had they disregarded the prosecutor's challenged comments.

In sum, on this record, the prosecutor's challenged comments did not amount to conduct so egregious that it infected the trial with such unfairness as to make conviction a

denial of due process in violation of the federal Constitution. Nor did the prosecutor's remarks amount to the use of deceptive or reprehensible methods to attempt to persuade the court or the jury so as to constitute prosecutorial misconduct under state law. We further conclude in any event that there is no reasonable probability that Ford would have achieved a more favorable result in the absence of the prosecutor's challenged comments. (*Ayala*, *supra*, 23 Cal.4th at p. 284; *People v. Frye*, *supra*, 18 Cal.4th at p. 970 [prosecutorial misconduct based on remarks to jury not prejudicial unless defendant establishes reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner].)

DISPOSITION

The judgment is affirmed.

Márquez, J.

WE CONCUR:

Rushing, P.J.

Premo, J.